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9 Attorneys for Plaintiff

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,) No. CR 10-703-MMC
14 Plaintiff,)
15 v.) **PROPOSED ORDER**
16 MICHAEL HIGGINBOTHAM,)
17 Defendant.)
18 _____

19 Upon a showing of good cause, the Court finds that by his Motion to Vacate, Set Aside or
20 Correct His Sentence, filed on December 7, 2011, defendant Michael Higginbotham (“defendant”)
21 raises claims of ineffective assistance of counsel and that the government cannot fully respond to
22 these claims without the requested waiver of the attorney-client privilege and requested discovery.
23 The Court therefore ORDERS that a response from the government to the motion is stayed until
24 further order of the Court.

25 The Court finds that if defendant chooses to proceed with the claims raised in his motion, he has
26 waived the attorney-client privilege in limited part, specifically as to the matters raised in that
27 motion. Therefore, the Court ORDERS that defendant respond within 30 days whether he will
28 withdraw the claims raised in his motion.

1 The Court further finds that upon a response from defendant, if defendant chooses to proceed
2 with his motion, it will enter a further order that (1) defendant has waived the attorney-client
3 privilege in limited part, specifically as to the areas raised in the Motion to Vacate, Set Aside or
4 Correct His Sentence, filed December 7, 2011; (2) that the government is entitled to inquire of First
5 Assistant Federal Public Defender Geoffrey Hansen regarding any oral communications with
6 defendant and review any written communications with the defendant relating to the subject areas
7 raised in defendant's claims; (3) that the government is precluded from using the privileged materials
8 for any purpose other than litigating the Motion to Vacate, Set Aside or Correct His Sentence; and
9 (4) that the government may not disclose these materials to any other persons, including law
10 enforcement or prosecutorial agencies, excluding other representatives of the United States
11 Attorney's Office who are assisting in responding to this motion.

12 SO ORDERED:

13 Dated: January 4, 2012


HONORABLE MAXINE M. CHEANEY
United States District Judge

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